

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY E. WHITT,

Plaintiff,

Case No. C15-1294-MJP-JPD

V.

SNOHOMISH COUNTY SUPERIOR
COURT, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

This is a *pro se* civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Rodney Whitt has been granted leave to proceed with this action *in forma pauperis*. Service has not been ordered. The Court, having reviewed plaintiff's complaint, and the balance of the record, concludes that the instant action is moot and should therefore be dismissed.

DISCUSSION

On August 13, 2015, plaintiff Rodney Whitt presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983 in which he alleged that defendants were violating his right to a speedy trial in a pending Snohomish County Superior Court criminal case. Plaintiff complained that he had been confined since June 2015, and had been effectively denied release

1 because he could not afford the bail amount established by the Everett District Court. Plaintiff
2 asserted that his trial date was set for September 11, 2015, but that his appointed counsel had
3 moved for a continuance in order to accommodate her vacation which would extend the trial date
4 beyond the speedy trial deadline. Plaintiff identified Snohomish County Superior Court, the
5 Snohomish County Prosecutor's Office, the Snohomish County Jail, the Everett District Court,
6 and the Snohomish County Sheriff's Office as defendants in this action. Plaintiff asked this
7 Court to order that he be tried in a timely fashion or that he be released from custody.

8 After reviewing plaintiff's complaint, this Court determined that plaintiff had not stated a
9 cognizable ground for relief under § 1983 and, thus, the Court issued an Order directing plaintiff
10 to show cause why this action should not be dismissed. (Dkt. 10.) Plaintiff was advised in the
11 Order to Show Cause that the federal courts will generally not intervene in a pending state court
12 criminal proceeding absent extraordinary circumstances where the danger of irreparable harm is
13 both great and immediate. (*Id.* at 2, citing *Younger v. Harris*, 401 U.S. 37 (1971)). Plaintiff was
14 further advised that his complaint did not reveal any extraordinary circumstances which would
15 appear to justify this Court's intervention in his ongoing state court criminal proceedings. (Dkt.
16 10 at 2.) Plaintiff was granted thirty days to file a response to the Order to Show Cause. (*Id.*)

17 On September 28, 2015, the Court received a series of documents from plaintiff which it
18 appears are intended to constitute plaintiff's response to the Order to Show Cause. (See Dkt. 11.)
19 Among the documents is a final release report from Snohomish County Corrections which
20 indicates that plaintiff was released from custody on September 21, 2015. (See Dkt. 11-3.) The
21 release report also appears to indicate that the charge upon which plaintiff was awaiting trial has
22 been dismissed. (See *id.*) Given that the relief plaintiff requested in the instant action was a
23 directive to Snohomish County that his trial be held in a timely fashion or that he be released

1 from custody, and given that the charges against plaintiff have apparently now been dismissed
2 and that plaintiff has been released from custody, it appears that the instant action is moot.

3 In general, a case becomes moot when a party lacks a "legally cognizable interest in the
4 outcome." *United State Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980) (quoting *Powell*
5 *v. McCormack*, 395 U.S. 486, 496 (1969)). Although the Courts have recognized an exception to
6 the general rule of mootness where there is a "reasonable expectation" or a "demonstrated
7 probability" that the same controversy will arise again involving the same complaining party,
8 there must be more than a mere physical or theoretical possibility of recurrence. *Murphy v.*
9 *Hunt*, 455 U.S. 478, 482 (1982) (per curiam) (citing *Weinstein v. Bradford*, 423 U.S. 147, 149
10 (1975)). Plaintiff brought the instant action to enforce his speedy trial rights in state court
11 criminal proceedings. The criminal proceedings have now been dismissed and there can be no
12 reasonable expectation that the circumstances which gave rise to the instant action will recur.
13 Accordingly, this Court concludes that the instant action is moot.

14 CONCLUSION

15 Based on the foregoing, this Court recommends that plaintiff's complaint and this action
16 be dismissed, with prejudice, prior to service. A proposed order accompanies this Report and
17 Recommendation.

18 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
19 served upon all parties to this suit by no later than **December 8, 2015**. Failure to file objections
20 within the specified time may affect your right to appeal. Objections should be noted for
21 consideration on the District Judge's motion calendar for the third Friday after they are filed.
22 Responses to objections may be filed within **fourteen (14)** days after service of objections. If no
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1 timely objections are filed, the matter will be ready for consideration by the District Judge on
2 **December 11, 2015.**

3 This Report and Recommendation is not an appealable order. Thus, a notice of appeal
4 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
5 assigned District Judge acts on this Report and Recommendation.

6 DATED this 17th day of November, 2015.

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8 JAMES P. DONOHUE
9 Chief United States Magistrate Judge

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